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## **PRESS RELEASE**

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FOR IMMEDIATE RELEASE  
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### **TUCSON BUSINESSMAN & OTHERS INDICTED FOR CONSPIRACY AND SMUGGLING UNAUTHORIZED MEDICAL DEVICES**

TUCSON, Ariz. -- The U.S. Attorney's Office for the District of Arizona announced that on April 27, 2005, a federal grand jury here returned a 24-count indictment against John Ray Payne of Tucson, Ariz.; Sun America Group, LLC, a Tucson-based company, and Johannes Christian Drzyzga of Hamburg, Germany.

The indictment alleges that Payne, his company Sun America Group, and Drzyzga conspired to smuggle goods into the U.S. by means of false statements to customs authorities. Specifically, on nine separate occasions in 2000, the defendants imported into the U.S. at least 11 Pulse Electronic Magnetic Field (PEMF) therapy devices by means of false invoices which disguised the medical nature of the devices. The defendants imported the devices by individual components rather than as an entire device and by undervaluing the devices and falsely describing the parts on duplicate invoices, they avoided additional scrutiny by U.S. customs authorities. The indictment alleges that the defendants knew that the PEMF devices had not been approved by the Food & Drug Administration (FDA) as an approved medical device for importation into the U.S. but conspired to circumvent customs officials in order to sell the devices in this country. PEMF devices are not permitted for medical use on humans in the U.S. except in one FDA-authorized clinical trial. (Information about PEMF devices can be found at [www.fda.gov](http://www.fda.gov).)

In addition to the conspiracy, false statements and smuggling charges, Payne and Sun America are also indicted on mail fraud and wire fraud charges for a scheme to sell or lease the PEMF devices to purchasers in the U.S. whom the defendants knew intended to use the devices on humans without telling the purchasers that the devices were not authorized by the FDA. According to the indictment, Payne and Sun America received at least \$383,700 for systems sold, an additional \$95,000 in licensing fees, and royalties from the use of the PEMF devices before the devices were seized. The indictment seeks forfeiture of the monies Payne and Sun America received from the purchasers as well as forfeiture of all of the PEMF devices seized.

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Payne and Sun America Group are expected to be formally arraigned on the charges on Thursday, May 5, 2005 at 11:00 a.m. in the Special Proceedings Courtroom in the U.S. District Court in Tucson, Ariz. Drzyzga is currently believed to be in Germany.

The federal indictment charges all three defendants with violating Title 18, U.S. Code, Sections 371 (Conspiracy - one count), 542 (Entry of Goods into the U.S. by Means of False Statements - 8 counts) and 545 (Smuggling Goods into the U.S. - 8 counts). Payne and Sun America also face four counts of Mail Fraud, in violation of Title 18, U.S. Code, Section 1341, and one count of Wire Fraud, in violation of Title 18, U.S. Code, Section 1343. The investigation preceding the indictment was conducted by U.S. Immigration and Customs Enforcement.

A conviction for Conspiracy or Smuggling carries a maximum penalty of five years in prison, a \$250,000 fine or both. A conviction for Mail or Wire Fraud carries a maximum penalty of 20 years in prison, a \$250,000 fine or both. A conviction for Entry of Goods into the U.S. by Means of False Statements carries a maximum penalty of two years in prison, a \$250,000 fine or both. A corporation's conviction for any of the charged offenses carries a maximum penalty of \$500,000 per count.

An indictment is simply the method by which a person is charged with criminal activity and raises no inference of guilt. An individual is presumed innocent until competent evidence is presented to a jury that establishes guilt beyond a reasonable doubt.

The prosecution is being handled by Danny N. Roetzel, Assistant U.S. Attorney, District of Arizona, Tucson, Ariz.

CASE NUMBER: CR 05-0871-TUC  
RELEASE NUMBER: 2005-084

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